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C O N F I D E N T I A L SECTION 01 OF 05 SARAJEVO 001728

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [PINR](#) [PHUM](#) [KDEM](#) [BK](#)

SUBJECT: BOSNIA - DODIK, TIHIC, COVIC AGREE TO A POLITICAL  
CEASE FIRE, BUT WILL IT LAST?

REF: A) SARAJEVO 1553 B) SARAJEVO 1724 C) STATE 113894

Classified By: Ambassador Charles L. English. Reasons 1.4 (b) and (d).

11. (C) SUMMARY: On November 8, Bosnia's three main political party leaders -- Sulejman Tihic, Dragan Covic, and Milorad Dodik -- issued a joint statement outlining a common approach to a number of controversial issues. The statement deals with constitutional reform, state and defense property, the census, Brcko, the state budget, and possible restructuring of the Council of Ministers (CoM). Although media and some internationals have hailed this statement as a "historic agreement" forecasting further compromise and dialogue, some party officials are privately skeptical about the feasibility of turning rhetoric into action. Moreover, Haris Silajdzic, Tihic's main Bosniak rival, and Bozo Ljubic, Covic's main Croat rival, did not respond so positively. Silajdzic's response was so angry that one paper characterized it as "hysterical." Opposition leader Zlatko Lagumdzija told us privately that he would not support any element of deal, arguing that the governing coalition, not the opposition, had the obligation to govern by making compromises and implementing them.

12. (C) We welcome dialogue on these issues, but share skepticism in some quarters about whether the political agreement will translate into concrete results. The devil is in the details, and there is ample scope for continued fighting over them. Though the joint statement could portend final settlements on state and defense property, it falls short of our objectives on Brcko -- codifying it as a Bosnian institution and guaranteeing it access to the Constitutional Court. We are encouraged by the political empowerment, and therefore ability to compromise, of Tihic and Covic, but they will need support from Lagumdzija if the statement's provisions are to become law given the predictable and angry reaction from Silajdzic and Ljubic. And while Dodik's willingness to negotiate with Tihic and Covic is a positive step, we will not be convinced that Dodik has turned over a new leaf until we see a longer-term pattern of constructive statements and actions given his two-year destructive track record. END SUMMARY

Party Leaders Scramble for Agreement Before PIC

13. (C) Party of Democratic Action (SDA) chairman Sulejman Tihic, Croatian Democratic Union (HDZ-BiH) chairman Dragan Covic, and Alliance of Independent Social Democrats (SNSD) chairman Milorad Dodik met on November 8 to discuss a number of issues on which Bosnian leaders have long been stalemated. Tihic and Covic forecasted the meeting at an October 27

dinner with Ambassador, but they were not optimistic about its prospects. It came as a surprise to the Bosnian political cognoscenti when the three men issued a joint statement outlining an agreed-upon approach to constitutional reform, state and defense property, a census, Brcko, the state budget, and restructuring the Council of Ministers. At least one media outlet has hailed this an "historic agreement" that shows Bosnian leaders are prepared for dialogue and compromise. The French Ambassador lauded the statement as an encouraging call for compromise and dialogue.

OHR and the EU have embraced it as a "step in the right direction," but underscored that the political commitments it contains must translate into "concrete results."

14. (C) Covic told us that he believes that aspects of the joint statement could be implemented quickly, provided he and Tihic can secure the support of the Social Democratic Party (SDP) and its leader Zlatko Lagumdzija. As Covic explained, SDP's votes in the state-level parliament are critical to secure passage of elements of the political agreement that other parties from the current ruling coalition, notably Bosniak member of the Tri-Presidency Haris Silajdzic's Party for BiH (SBiH), are unlikely to support. Covic's expectations that Lagumdzija will support any, let alone all, elements of the political deal may be misplaced, however. Lagumdzija privately criticized specifics of the statement with us, including those that dealt with Brcko, the census, and constitutional reform. He reiterated to us his long-held position that, as an opposition party, SDP was not prepared to support legislation that did not enjoy the support of the entire governing coalition.

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#### Constitutional Reform: More Discussion Later

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15. (C) On constitutional reform (CR), Dodik, Tihic, and Covic committed themselves to a CR process at a later date. They agreed these talks would focus on four areas: 1) harmonizing the constitution with the European Convention on Human Rights, 2) responsibilities of the state (i.e., the division of competencies between the entities and the state), 3) improving the functionality of Bosnia's institutions, and 4) territorial organization. The leaders also agreed to enlist international expertise in the process. Most importantly, the three men agreed that the CR process would involve amending the current constitution, not drafting an entirely new document, as Haris Silajdzic and HDZ-1990 leader Bozo Ljubic have insisted. Political analysts have interpreted the three men's agreement on constitutional reform as an attempt to revive the U.S.-brokered package of constitutional amendments.

#### State Property: Endorsing the PIC Proposal

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16. (C) The proposed agreement on state property nearly matches that suggested by the PIC Ambassadors on October 30, which provided that the state would own all property needed for the work of state institutions, but that all other property would belong to lower levels of government (i.e., entities, cantons, or municipalities). Notably, the Dodik-Tihic-Covic statement on state property also includes defense property, which the PIC had been treating separately for purposes of the "5 2" agenda. The joint statement appears to suggest that immovable defense property, the only outstanding defense property issue, would be divided along the same functional and territorial lines as all other state property with the Ministry of Defense (MoD) and Bosnian Armed Forces owning outright whatever it required. The July 2007 political agreement on defense property provided for use, not ownership, of immovable defense property, however, and NATO has been working with the MoD to draft a transfer agreement on immovable defense property consistent with the July 2007 agreement. It appears that Dodik may have made a concession

on immovable defense property as part of the overall solution to state property, but it is unclear if that was what Dodik intended. Covic assured us that it was, but our experience negotiating the movable defense property agreement suggests Dodik does not always pay attention to the details (to put it kindly).

#### Census: Tihic and Covic Capitulate

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¶17. (C) The leaders agreed to hold a census in 2011 and to include data on ethnicity, religion, and language, to which Bosniaks and Croats have long objected and Dodik has long insisted (ref A). In exchange for the inclusion of these data, the party leaders agreed to use the 1991 census data until 2014 as a basis for determining ethnic representation in institutions at all levels of government. SDA Vice President Sefik Dzaferovic told us that SDA would demand the amendments of several laws and other regulations to substitute the "the 1991 census" for "the most recent census" in order to ensure the compromise has its intended impact. The parties also agreed to push through parliament a five-year program beginning in 2009 to support returns of displaced persons. Dzaferovic noted that SDA would support the census only if parliament adopts and fully implements this program. This part of the joint statement constitutes a significant compromise by Tihic and Covic. All sides are aware of the need for a census -- primarily to meet an EU requirement -- and we suspect that the returns program and the use of 1991 data for representation constitute what Tihic and Covic assess will be sufficient political cover to justify their concessions on the questions to be included in the census.

#### Brcko District: Legal Confusion

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¶18. (C) The leaders agreed to provide adequate legal protections to Brcko vis-a-vis the state and entities by an unspecified "constitutional act" or by a law with a

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constitutional two-thirds majority. This language implies passage of a so-called "constitutional law" rather than the two constitutional amendments and the state-level law on Brcko, which we, the Brcko Supervisor, and others have argued are necessary to address outstanding issues related to Brcko.

Both Dzaferovic and SNSD state-level parliamentarian Lazar Prodanovic expressed skepticism that the joint statement offered a viable solution on Brcko. Dzaferovic noted that adopting a "constitutional act" or "constitutional law" on Brcko would first require an amendment to the constitution introducing such a legal category and specifying the areas to which it would apply. This would be far more complicated than adopting a constitutional amendment on Brcko, Dzaferovic observed. Lagumdzija mocked the notion that a political agreement could introduce into Bosnian jurisprudence a "non-existent" legal concept. Covic pleaded legal ignorance, but told us that Tihic had told both Dodik and Covic that it was possible to adopt a "constitutional law." (Note: This represents a 180 degree reversal from what Tihic maintained several months ago, and his willingness to abandon the Brcko amendments flatly contradicts stated SDA policy. End Note).

#### Council of Ministers: Trying to Get Rid of SBiH

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¶19. (C) The parties officially stated that they discussed the need for reconstruction of the Council of Ministers and agreed to continue discussions about the topic. The daily Dnevni Avaz, however, is speculating that the leaders cogitated on the possibility of ousting SBiH from the government and replacing it with SDP. Indeed, Tihic in a press statement claimed that amid the vicissitudes of negotiations within the ruling coalition, he had hoped the coalition with SBiH would stand but now is having doubts as

rifts between his party and SBiH are deepening. He speculated on the possibility of either early elections or forming a minority government without SBiH, but with SDP support.

#### Silajdzic "the Loser" and Ljubic React Strongly

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¶10. (C) Silajdzic held a press conference in which he strongly criticized the Dodik-Tihic-Covic agreement. He chastised Tihic and Covic for "moral and political capitulation" to pressure from Dodik, adding that besides the Brcko agreement, no element of the joint statement was acceptable to him or SBiH. Taking his challenge directly to a hostile environment, Silajdzic appeared on a popular RSTV news program. He portrayed the statement as the "final nail in the coffin Tihic has prepared for Bosnia," adding that Serb intransigence continues to obstruct Bosnia's progress toward the EU. Some media characterized Silajdzic's reaction as "hysterical," but the Sarajevo-based, pro-Bosniak daily Dnevni Avaz had the harshest words, labeling Silajdzic a "historical loser" who had been punished by his voters in the October elections and was now being ostracized by the three leading parties. (Comment: That Dnevni Avaz has taken such a position is itself evidence of a sea-change in Bosniak politics, as the paper was once a strong supporter of Silajdzic, including his 2006 campaign against the U.S.-brokered package of constitutional amendments. End Comment) HDZ-1990 chairman Bozo Ljubic also maligned the joint statement, bemoaning the fact that he was not invited to the meeting and declaring that only Dodik could be satisfied with its results given Tihic's and Covic's complete capitulation on the constitution and census. Ljubic added sarcastically, "It looks like OHR is not necessary when (these three leaders) agree so quickly."

#### Comment I: What the Statement Means for OHR Closure

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¶11. (C) The Dodik-Tihic-Covic joint statement has been hailed as "historic" by some, merely "welcomed" by others, and condemned by a few (principally Tihic's and Covic's main political rivals in SBiH and HDZ-1990, respectively). We have publicly welcomed the "constructive dialogue" aimed at resolving the political gridlock in Bosnia, but have been more cautious than our European counterparts. Though the joint statement does open a path to OHR-EUSR transition, it does not clear it of potential political roadblocks. Like all political agreements, particularly those involving rival

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Bosnian political leaders, the devil is in the details. There is ample scope for continued fighting over these details, just as there was with the July 2007 Defense Property Agreement and the November 2007 Mostar Declaration on police reform, neither of which produced their promised reforms. And signals from Lagumdzija that he and his party have no intention of helping the ruling coalition do what it cannot do on its own suggest that this deal may never mature.

¶12. (C) That said, we welcome what is clearly progress on state and defense property, even if its immediate political prospects look uncertain. The major problem for us is the statement's provisions on Brcko. They fall short of what we continue to believe is the most effective way to ensure Brcko has adequate legal protections vis-a-vis the state and entities: a state-level law on Brcko and -- most notably -- constitutional amendments enshrining it as a Bosnian institution and guaranteeing it access to the Constitutional Court. The joint statement does not close the door completely on amendments, but it comes close, and it opens the door to a solution that has no basis in the Bosnian constitution: for all intents and purposes, a "constitutional law." Common in other European jurisdictions (most notably Slovakia, where the HighRep got the idea and proposed it to Dodik and others), this category of law simply does not exist

here. Nonetheless, we suspect there will be pressure from the HighRep and the EU to embrace this flawed approach, even though a state-level law is insufficient in terms of binding the Constitutional Court. Absent constitutional amendments, we also remain concerned about the continued existence of a 1999 RS National Assembly (RSNA) resolution that explicitly repudiates the Tribunal and the Final Award. We will need to consider carefully how to proceed.

Comment II: What Made the Deal Possible  
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¶13. (C) Before the October 5 municipal elections, Tihic and Covic could not have reached this type of agreement with Dodik, and not just because a pre-election political environment makes any meaningful political deal with an opponent (in this case Dodik) difficult. On October 5, voters dealt Tihic's rival -- Silajdzic -- and Covic's rival -- Ljubic -- major political setbacks. Tihic and Covic feel more confident politically, hence their willingness to compromise, despite their private concerns that Dodik is no longer the reliable partner with whom they negotiated two years ago. Tihic and Covic are also eager to finish off their rivals, who are down, but not yet out. Hence, the eagerness of both men to secure Dodik's commitment for talks on the "reconstruction of the Council of Ministers." Dodik's motives are different. As his campaign to de-legitimize and undermine the state has picked up pace in recent weeks, he has come under greater pressure from the international community, mainly the U.S. At the same time, influential foreign policy thinkers in Western capitals have begun to call for robust re-engagement in Bosnia, including keeping OHR open longer than currently anticipated. Dodik wants neither, and he needs, as one politician told us, to take the heat off. The timing -- just before the GAERC and the PIC -- is perfect for Dodik, since the headline going into both is now "Dodik the Compromiser," not, "Dodik the Destroyer."

Comment III: Has Dodik Changed His Spots?  
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¶14. (C) Tihic and Covic undoubtedly took a political risk -- Silajdzic and Covic are already attacking them vigorously, particularly over their willingness to concede that constitutional reform should be a step-by-step affair that builds upon Dayton, rather than a process designed to draft an entirely new document. Dodik appears to have conceded little. He agreed to talks about constitutional reform and government restructuring, but nothing more. He moved both men closer to his position on Brcko. Only on state and defense property did he appear to compromise -- he now seems to have accepted the idea that the state will own outright certain properties now in possession of the entities. On immovable defense property, this constitutes a concession beyond what Dodik accepted in the July 2007 Defense Property Agreement. But these may have been tactical retreats to secure his strategic goal of OHR closure and permanent elimination of the potential threat to the RS posed by the

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Bonn Powers. We cannot conclude that Dodik's intentions have changed (refs B and C) until we have seen a longer-term pattern of constructive statements and actions from him to counter his two-year destructive track record.  
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